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for neither. *Prather v. City of Lexington,* 52 Ky. 559. Thus, for example, in the case of a teamster's hauling stone for the public purpose of repairing the public highway, and a person was injured through the carelessness of such teamster, the doctrine of *respondeat superior* did not apply. *Barney v. City of Lowell,* 98 Mass. 570. However, in New York it has been held that the doctrine does apply in the case of injuries resulting from the negligence of persons employed by municipal officers in repairing the public sewers. *Lloyd v. City of New York,* 5 N. Y. 369. And, also, in *Stephani v. City of Manitowac,* 89 Wis. 467, the facts of which seem to be somewhat similar to those in the case under discussion—the city was held liable for injuries sustained by reason of a defective drawbridge and failure of manipulation of said bridge by its tender. But with respect to property used for its private purposes and profits, a municipal corporation is subject to the same responsibility as an individual or private corporation under the same circumstances. 2 *Dill. Mun. Corp.,* Sect. 985 *et seq.* Thus, for example, where a city was having work done in a cemetery conducted by a superintendent, it was held liable for injuries to an employee under the superintendent, by reason of the negligence of the latter. *City of Toledo v. Cone,* 41 Ohio St. 149. This doctrine of *respondeat superior* in the case of municipal corporations applies in the same manner and to the same extent with respect to injuries to the property as it does to personal injuries. *Deane v. Inhabitants of Randolph,* 132 Mass. 475.

MUNICIPAL CORPORATIONS—NEGLIGENT ACTS OF OFFICERS—LIABILITY.—JACKSON V. CITY OF OWINGSVILLE, 121 S. W. (KY.).—*Held,* that a city is not liable for injuries sustained by one while breaking rock on the municipal stone pile to pay a fine, in consequence of a splinter of the hammer—used by another engaged in a like occupation—flying off and striking him in the eye, though the accident was caused by the negligence of its officers.

A municipality in exercising police power is acting as the agent of the state, and therefore it has almost invariably been held that it is not liable for the tortious or negligent acts of its officers while so engaged. *Brown v. Town of Guyandotte,* 34 W. Va. 299; *Gullikson v. McDonald,* 62 Minn. 278; *La Cleft v. City of Concordia,* 41 Kan. 323; *McAuliff v. City of Victor,* 15 Colo. App. 337. In some jurisdictions, however, it has been held that where in this respect a municipal corporation is voluntarily assuming a part of the sovereignty of the state, for the purposes of local self government, it was liable for the negligence of its officers. *Edwards v. Town of Pocahontas,* 47 Fed. 268. But it has been held that there is no liability unless the negligent acts are known to the governing officers of the town. *Moffitt v. City of Asheville,* 103 N. C. 237. And it is immaterial that the municipality derives a revenue from the work of the prisoners. *Curran v. City of Boston,* 151 Mass. 505. On the other hand it is well settled that if the police officers are negligent while engaged in some matter outside of their public duties, but connected with the corporate affairs of the city, the municipality will be liable. *City of Hillsboro v. Ivey,* 1 Tex. Civ. App. 653; *Carrington v.*

City of St. Louis, 89 Mo. 208; *Twist v. City of Rochester,* 165 N. Y. 619 (affirming 37 App. Div. 307).

MUNICIPAL CORPORATIONS—USE OF STREETS—GRANT AND EXTENT OF RIGHTS.—GRAND TRUNK & W. RY. CO. v. CITY OF SOUTH BEND, 89 N. E. REP. 885 (IND.).—*Held,* that an ordinance permitting the use of streets upon certain conditions is not a purely private contract when accepted, and becomes a binding contract only so far as it affects business interests or administrative functions of the city, but is not binding upon it to the extent that it surrenders its police powers.

A franchise given to a railroad to operate its road in the streets of a city is derived from the legislature, through the charter of the city, and not from the municipal corporation, though its consent may be required, and the latter has no power to revoke. *Africa v. Board,* 70 Fed. 729. This grant by the state through the consent of the municipal corporation, when accepted by the company, gives the latter a legal and contractual right in the franchise, which under the Constitution of the United States is irrevocable and inviolable. *Hazen v. Bank,* 1 Sneed, 115. And the only method by which such a franchise may be revoked or altered is by a legislative enactment of a statute authorizing it. *Africa v. Board,* 70 Fed. 729; *Elizabethtown Gas Light Co. v. Green,* 46 N. J. Eq. 118. However, contrary to this, it has been held that a city council is merely a trustee for not only the city but for the whole people of the state. *Logansport Ry. Co. v. City of Logansport,* 114 Fed. 688. And by a franchise to a company, the city does not bargain away its right under police power to protect public health, morals and safety. *City of Indianapolis v. Consumers' Gas Trust Company,* 140 Ind. 107. This right to exercise such police power on the part of the city is a continuing right. *Indiana Ry. Co. v. Calvert,* 168 Ind. 321. And such regulations may be made by the city council although they will cause expense to the company; and the company will not be entitled to reimbursement. *In re Deering,* 93 N. Y. 361. But in all cases the regulations must be reasonable. *Appeal of Pittsburg,* 115 Pa. 4. In *Baltimore Co. v. Baltimore,* 166 U. S. 673, it was held that where a franchise to lay a double track had been given, it was not an unreasonable exercise of police power to restrict the company to only one track. Also it has been held that where an ordinance has authorized the laying of one track and the company has not availed itself of this power with respect to one certain street, the forbidding of the laying of that one track in that particular street was not an unreasonable regulation under exercise of police power, because the city council is a trustee for the public and cannot abridge their legislative power. *Snouffer v. Chicago Co.,* 118 Iowa, 287.

NUISANCE—POLLUTION OF WATERS—PRESCRIPTIVE RIGHTS.—WEEKS-THORN PAPER CO. V. GLENSIDE WOOLEN MILLS, 118 N. Y. SUPP. 1027.—*Held,* that where the very act declared illegal by Pen. Code, Sect. 390, prohibiting the discharge of any noxious, offensive, or poisonous substances into public waters or streams running into such waters, is the act that damages plaintiff, no continuance thereof could create a prescriptive right.